IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

Kamal Singh & Ors. VS. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.5649/93
under Article 226 & 227 of the
Constitution of India.

Date of order : 07th September, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Sajjan Singh) for the petitioners.
Mr. Durga Ram Kawadia)

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. Mukesh Rajpurohit for the respondents.

BY THE COURT: -

Heard learned counsel for the parties.

This petition seeks to challenge the order dated 1.12.1983 Annex.3 by which the Collector set

apart the land in question which was recorded as a Government land in land records for the purpose of transferring it to the then Municipal Board, Barmer and the order dated 23rd Sept., 1993 passed by the Board of Revenue for Rajasthan on further appeal against the order of the Revenue Appellate Authority referred to above.

It may be noticed here that the petitioners claim to be in occupation of the land in question under pattas issued by the competent authorities on different dates and claimed to be having title of the land in question. Their claim to title is disputed, however, what is not in dispute is that in the land record the land has been recorded as Government land. Apparently Collector has dealt with land on the basis of available record by treating it to be government land and dealing with in terms of Municipalities Act. The Revenue Appellate Authority in its order Annex.5 has found pattas issued by the erstwhile Jagirdar between Samwat year 1965- 1999 to be genuine and held the allotment of land by the Collector to the Municipal Council to be

invalid and further held that the allotment made by the Collector does not affect the rights of patta holders.

On further appeal by the Municipal Council and State of Rajasthan, the Board of Revenue doubted the genuineness of the patta issued by the erstwhile Jagirdar by observing that in the absence of any corroborative evidence about the fact that such pattas were actually issued on record of the Jagir Commissioner and upheld the action of the Collector on the basis of existing land records. In the aforesaid circumstances, this petition is before this Court.

At the outset, it may be stated that so far as the action of the Collector in transferring the land from the Government account to the Municipal Board, Barmer for the purpose of future use is on the premise that the land is the Government land on the basis of land record and for that purpose his competence has not been doubted and cannot be doubted. The crux of the issue is whether the rights of the parties, who claim interest in land by claiming permanent title in the land adverse to

the State Government can be affected by such order?

Obviously such right, if it exists cannot be defeated by such order. It is also trite to say that action of any authority cannot affect the existing rights until the rights are extinguished or determined in accordance with the law. Therefore, so far as the position is concerned, it is clear that notwithstanding the existence of the entries in the land record and its dealing by the State Government, the rights of the true holder of title remain unaffected which can be vindicated in accordance with the law in appropriate proceedings. It is also not seriously disputed that where the question of title itself is in dispute, the remedy is to settle the dispute by an appropriate proceedings before a appropriate forum by way of a civil suit or Revenue suit as the case may be and not by way of summary proceedings to which resort appears to have been taken by the petitioners. In fact, the petitioners have not even taken resort to for seeking the correction of entries in the land record but have sought to set aside the order of Collector on the basis of their claim to title put forth by

them and evidenced by the pattas alleged to have been issued by the erstwhile Jagirdar.

In these circumstances, the whole proceedings of the challenge to the order of Collector by taking the matter in appeal before the Revenue Appellate Authority and further appeal before the Board of Revenue were under misconception of law prevailing with the parties. Assuming it to be without commenting on merit of the issue even if the order of setting apart a land for Municipal Board, Barmer is set aside it would not alter the position of land nor it could defeat any lawful claim to its title can be made by any reason which in fact has been raised by the petitioner. For determining such question between the State Government and the petitioners, it will have to be resolved elsewhere by appropriate forum after holding proper trial in issues arising from such claim. This is so because the entries in land records made during settlement comes with presumption of their correctness. However, the presumption is rebutable and can be challenged.

This Court has occasion to consider the effect of entries made in the land records and the remedies to which a party affected by erroneous entries made in land records during the course of settlement, in Budhdan Vs. State, D.B. Special Appeal No.165/1987 decided on 2nd June, 2004. Taking into consideration the scheme of provision relating to the settlement and corrections of the entries made in the land records and the statutory presumption attached to the correctness of the entries made in the land record under Section 140 of the Rajasthan Land Revenue Act, the Court observed as under:-

> "The aforesaid provision clearly postulates that these happening takes place after the entries have been made in the record of rights as a result of which the transfer of possession of the land takes place and such transfer of possession has to be reported within three months from the date on which the transferee or their successor-in-interest acquires possession of the land to the Patwari or the Tehsildar, as the case may be. Section 133 apparently is not meant for raising a claim, which is pre-existing and is traceable

> to exist prior to making of entry during the course of survey operations or record operations or anterior thereto, in respect of which the person in possession has an opportunity to raise objection at that time and on raising of such objections, the Land Records Officer is empowered to enquire into such objections at the time of attestation of entries."

While considering the procedure laid down under Section 135 for making correction in the entries made in the land record, the Court observed that :-

> "A perusal of Section 135 clearly postulate that it refers to furnishing of report under Section 133 in respect of transfer that has taken place as a result of succession, transfer or otherwise of the property or right or interest in the land subsequent to making of existing entries and that has necessiated amendment in the record of rights by making necessary entries in the annual register. Sub-section (2) of Section 135 confers jurisdiction to Tehsildar, if competent under this Act or any other law for the time being in force, to decide dispute about such

succession or transfer clearly denotes that the dispute which the Tehsildar has been authorised to decide under Section 135 must relate to subsequent acquisition of possession by the applicant of the land or any other interest in the land by way of succession, transfer or other form."

The Court further observed that :-

"The short-cut for seeking a declaration and conferment of khataderi by initiating proceedings under the Land Revenue Act for mutation by bye-passing the procedure provided under the Rajasthan Tenancy Act is not permissible in law."

In the final conclusion, the Court said:-

"It is true to say that mutation proceedings are not for determining the rights of the parties but are susceptible to change to the extent as provided under the Act. Since the entries have been made in the record of rights at the time of survey or settlement proceedings on admission of the

applicant-respondent petitioner Shyama, it was not open for Shyama to have sought alteration in the entries by making an application under Section 133 of the Rajasthan Land Revenue Act and secure the amendment in the annual register and indirectly get a declaration of khataderi rights in their favour, by altering the existing presumption about entries depicting true state of affairs under Section 140 of Rajasthan Land Revenue Act. This would result in throwing out the person who has been shown as original holder of the land in the record of rights by altering his position to his detriment because the presumption under Section 140 will also change in favour of person whose name has been mutated in place of original holder. If such impugned entries are allowed to stand, it shall make the party, who has been affected by the change in the entries in the land record by losing a presmption in his favour under Section 140, and shall be driven to take recourse to substantive remedies and that is contrary to what precisely has been sought to be protected by Section 140 of the Rajasthan Land Revenue Act.

In our opinion, once the entries are

> made during the survey and record operations on the basis of admission made by the person who had the opportunity to object it, if he subsequently wants to seek alteration in such entries by asserting the title in himself, contrary to admission made by him earlier, the only course left open to him is to file a suit/application for declaration of his title and claim alteration in the record of rights on the basis of the findings reached in that proceedings, which is governed by the provisions of Rajasthan Tenancy Act and not by the Rajasthan Land Revenue Act."

Apparently, in the present case, the petitioners are seeking vindication of their rights on the basis of preexisting title prior to the entries made in the land record. Therefore, the appropriate course for the petitioners was to seek a declaration of their title in terms of the Rajasthan Tenancy Act if the land is agricultural land and if the land is not agricultural land by filing a civil suit. So also the Revenue Authorities, when there being any change in the entries made in the land record in accordance with law would be having jurisdiction to act in terms of the entries made in the

land records in accordance with the presumption arising in favour of the existing affairs at the time of making entries until the alteration is made in accordance with law in such entries.

That being the position, the appropriate course for the petitioners is to seek their remedy by appropriate proceedings for getting the appropriate reliefs.

In these circumstances, I deem it just and proper to leave the petitioners at liberty to seek their remedy in respect of their declaration of title and the remedies against any person, who seeks to defeat their title, if any, in accordance with law, unaffected by any observation made against them in these proceedings.

In view of the aforesaid, it is made clear that any observation contrary to the petitioners' interest in the order passed by the Board of Revenue shall have no effect on the proceedings which may now be resorted to by the petitioners for vindicating their rights about the

land in question.

Before parting with the case, I may also notice a Bench decision relied on by the learned counsel for the petitioners rendered in D.B. Civil Writ Petition No.163/78, The State of Raj. Vs. Than Singh & Others. Decided on 4th May, 1978. The aforesaid judgment is primarily founded on the facts admitted by the petitioners which included admission of the genuineness of the patta possessed by the respondents and the only question which was contested before the Court was about the jurisdiction of the Board for correcting the entries made in the land records. The dispute is primarily founded on the conduct of the petitioners and the ratio of the Supreme Court decision in A.M. Allison V. B.L. Sen AIR 1957 SC 227 that “the proceedings by way of certiorari are not “of course”. High Courts have time and again refused writs of certiorari if there is no failure of substantial justice and, therefore, the writ petition filed by the State for setting aside the order of the Board of Revenue making an order on the basis of genuineness of patta in favour of the respondents and finding the

settlement proceedings had taken place arbitrarily having not affected the petitioners' right was dismissed".

In this connection, it may also be apposite to notice that in a later decision of the Supreme Court in Balwantrai Vs. M.N. Gagrashna AIR (47) 1960 SC 407 wherein the Court after referring to A.M. Allison's case (supra) had clearly observed that where there is no substantial failure of justice, the Court would refuse to entertain a petition in its discretion even if there is force in the submission made by the petitioners that the authority deciding the case had no jurisdiction.

I am, therefore, of the opinion that the decision rendered in State of Rajasthan Vs. Than Singh and others decided on 4th May, 1978 is distinguishable on facts and does not affect the outcome of this petition.

It is urged by the learned counsel for the petitioners that until the petitioners seek recourse to the remedy in accordance with the law before the appropriate forum and seek protection by way of

seeking interim order from this Court and orders are passed thereon by the appropriate authority in first instance their interest may be protected. The prayer appears to be reasonable, therefore, the interim order passed by this Court, shall continue in case the petitioners take recourse to remedial forum and seek interim relief within two months from the date certified copy is made available to the parties, until any orders are passed by the authority of first instance. Orders on such application, if any, shall be passed within one month of making of such application.

The petition is accordingly disposed of. No order as to costs.

[RAJESH BALIA], J.

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